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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,852	12/21/2000	Charles A. Eldering	T721-19	8089

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EXPANSE NETWORKS, INC.
6206 KELLERS CHURCH ROAD
PIPERSVILLE, PA 18947

EXAMINER	
SHELEHEDA, JAMES R	

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/742,852	ELDERING, CHARLES A.	
	Examiner	Art Unit	
	James Sheleheda	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *4-8 and 53-89* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *4-8 and 53-89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/12/04,8/19/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 53-57, 59-76 and 78-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (Zigmond) (6,698,020) (of record) in view of Doherty (US2003/0200128A1) (of record).

As to claim 53, Zigmond discloses a system capable of updating a list of targeted advertisements to be presented to a subscriber based on viewing parameters associated with the subscriber (Fig. 7; column 6, lines 4-12, column 10, lines 64-67 and column 11, lines 1-3), the system comprising:

a watchdog module (ad insertion device, 60) to monitor viewing parameters (column 9, lines 21-30) and detecting changes in the viewing parameters (column 9, lines 21-30), wherein the changes include at least some subset of channel (see Zigmond at column 9, lines 21-30 and lines 52-55), viewer (see Zigmond at column 9, lines 56-62) and program type (column 12, lines 60-67 and column 13, lines 1-6); and

an ad scheduler (Fig. 5; ad insertion device, 80; wherein Fig. 5 is a detailed description of an insertion device used in Fig. 3) to generate an advertisement (column 12, lines 33-38) to be targeted to a subscriber (column 11, lines 31-49).

While Zigmond discloses selecting an advertisement to display to a user (column 17, lines 24-28) based upon changes in viewing parameters (such as program the viewer has currently tuned to; column 12, lines 47-53),

he fails to specifically disclose generating a list of advertisements and wherein the ad scheduler is capable of reordering the list responsive to said watchdog module.

In an analogous art, Doherty discloses a system for displaying targeted advertising (Fig. 1; paragraph 25, lines 1-6) wherein a ad scheduler (scheduler, 140; Fig. 1) will assemble a list (the schedule; paragraph 29) of references pointing to advertisements (paragraph 28, lines 3-7 and paragraph 29), based upon advertisement priorities (paragraph 40), to determine the order in which advertisements are displayed (paragraph 38) and which is capable of reordering the list (clearing and rebuilding the schedule; paragraph 30, lines 9-11) responsive to a watchdog module (application module detecting user interaction; paragraph 30, lines 4-11) for the typical benefit of providing a stored schedule which can help ensure that advertisements are properly prepared for output at their assigned times (paragraph 28, lines 1-11 and paragraph 38, lines 4-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond's system to include generating a list of advertisements and wherein the ad scheduler is capable of reordering the list responsive to said watchdog module, as taught by Doherty, for the typical advantage of ensuring that advertisements are properly prepared for output at their assigned times thereby promoting efficient advertisement delivery.

As to claim 54, Zigmond and Doherty disclose wherein the changes further include time (wherein the monitoring of user actions includes time information; see Zigmond at column 11, lines 14-18).

As to claim 55, Zigmond and Doherty disclose wherein said ad scheduler determines if a particular change in viewing parameters is sufficient to reorder the list (wherein only specific user interactions are entered into the profile to determine the next ads; see Zigmond at column 10, lines 40-47 and column 13, lines 7-14).

As to claim 56, Zigmond and Doherty disclose a tuner (wherein a broadcast television receiver inherently contains a tuner; see Zigmond at column 7, lines 13-25) to tune to a channel selected by the subscriber (column 9, lines 21-28 and column 13, lines 12-28), wherein said watchdog module detects channel changes (see Zigmond at column 9, lines 21-28 and column 13, lines 12-28) by monitoring what channel the tuner is tuned to (wherein channel changes, requiring tuning to a new channel, are monitored; see Zigmond at column 9, lines 21-28 and column 13, lines 12-28).

As to claim 57, Zigmond and Doherty disclose wherein said watchdog module detects program type changes based on program data (monitoring the current program being viewed; see Zigmond at column 12, lines 44-67 and column 13, lines 1-6) and

channel selections (wherein the current program is inherently based upon the current channel selection; see Zigmond at column 12, lines 44-66).

As to claim 59, Zigmond and Doherty disclose a profiler (viewer and system information, 82) to process subscriber interactions in order to generate a viewing session profile (see Zigmond at column 9, lines 65-67, column 10, lines 1-3 and lines 36-47 and column 11, lines 13-18), wherein the viewing session profile defines characteristics related to a subscriber for a viewing session (preferred channels and programs; see Zigmond at column 10, lines 40-47 and column 11, lines 15-18).

As to claim 60, Zigmond and Doherty disclose wherein said watchdog module detects viewer changes based on viewing session profiles (identifying current viewer based upon current viewing habits; see Zigmond at column 9, lines 65-67 and column 10, lines 1-3 and lines 35-47) and previously defined subscriber profiles (past viewing habits; see Zigmond at column 9, lines 65-67 and column 10, lines 1-3 and lines 35-47), wherein the subscriber profiles define characteristics related to particular viewers (defining past preferred channels and programs; see Zigmond at column 10, lines 40-47 and column 11, lines 15-18).

As to claim 61, Zigmond and Doherty disclose an ad insertion module (see Zigmond at Fig. 5; video switch, 90) to insert advertisements into avails within programming being presented to the subscriber (see Zigmond at column 15, lines 52-

65), wherein the insertion is performed in accordance with the list (see Doherty at paragraph 29).

As to claim 62, Zigmond and Doherty disclose a storage unit to store the list of advertisements (wherein the schedule is recorded; see Doherty at paragraph 29).

As to claim 63, Zigmond and Doherty disclose wherein the list includes advertisement resource locators for the advertisements in the list ("references" pointing to the ads; see Doherty at paragraph 38, lines 9-12 and paragraph 28, lines 3-7), the ARL's corresponding to locations where the advertisements can be retrieved for insertion (see Doherty at paragraph 38, lines 9-12 and paragraph 28, lines 3-7).

As to claim 64, Zigmond and Doherty disclose wherein the list includes parameters (ad selection parameters associated with the ad; see Zigmond at column 11, lines 35-42 and column 12, lines 15-17) that may affect selection of the advertisements from the list (wherein the ad is only selected when it matches certain criteria; see Zigmond at column 11, lines 35-49).

As to claim 65, Zigmond and Doherty disclose wherein the parameters include at least program (see Zigmond at column 12, lines 44-59).

As to claim 66, Zigmond and Doherty disclose wherein the selection of the advertisements from the list may be based on advertisements that contain parameters (wherein the ad includes the parameter for particular cast members; see Zigmond at column 12, lines 60-67 and column 13, lines 1-6) associated with a channel being viewed (wherein the ad is selected if the current program contains the required cast member; see Zigmond at column 12, lines 60-67 and column 13, lines 1-6).

As to claim 67, Zigmond and Doherty disclose a receiver (see Zigmond at Fig. 5; ad insertion device) to receive at least one programming channel (see Zigmond at column 7, lines 13-25) from a communication network (see Zigmond at column 7, lines 13-25).

As to claim 68, Zigmond and Doherty disclose wherein the communications network is a content delivery network (delivering program content; see Zigmond at column 7, lines 16-21).

As to claim 69, Zigmond and Doherty disclose wherein the content delivery network is a television service network (see Zigmond at column 7, lines 16-21).

As to claim 70, Zigmond and Doherty disclose wherein the content delivery network is an Internet service network (see Zigmond at column 7, lines 16-21).

As to claim 71, Zigmond and Doherty disclose wherein the content delivery network is a satellite network (see Zigmond at column 7, lines 16-21).

As to claim 72, while Zigmond and Doherty disclose wherein the content delivery network architecture is a cable television network (see Zigmond at column 7, lines 13-21), they fail to specifically disclose a hybrid fiber coax (HFC) cable network.

The examiner takes official notice that it is notoriously well known in the art to utilize a hybrid fiber-coax (HFC) network to deliver content to take advantage of well known advantages, such as increased bandwidth and lower noise, that an HFC network has over traditional cable networks.

It would have been obvious to one of ordinary skill in the art to modify Zigmond and Doherty's system to include wherein the content delivery network architecture is a cable television network for the typical benefits of utilizing a delivery network with higher bandwidth and lower noise.

As to claim 73, Zigmond and Doherty disclose wherein the content delivered over the content delivery network architecture is digital (wherein Internet content is inherently digital; see Zigmond at column 7, lines 16-21).

As to claim 74, Zigmond discloses a method of updating a selection of a targeted advertisement to be presented to a subscriber based on viewing parameters associated

with the subscriber (Fig. 7; column 6, lines 4-12, column 10, lines 64-67 and column 11, lines 1-3), the method comprising:

monitoring viewing parameters (column 9, lines 21-30); and

detecting changes in the viewing parameters (column 9, lines 21-30), wherein the changes include at least some subset of channel (see Zigmond at column 9, lines 21-30 and lines 52-55), viewer (see Zigmond at column 9, lines 56-62) and program type (column 12, lines 60-67 and column 13, lines 1-6).

While Zigmond discloses selecting an advertisement to display to a user (column 17, lines 24-28) based upon changes in viewing parameters (such as program the viewer has currently tuned to; column 12, lines 47-53),

he fails to specifically disclose generating a list of advertisements and reordering the list responsive to said watchdog module.

In an analogous art, Doherty discloses a system for displaying targeted advertising (Fig. 1; paragraph 25, lines 1-6) wherein a ad scheduler (scheduler, 140; Fig. 1) will assemble a list (the schedule; paragraph 29) of references pointing to advertisements (paragraph 28, lines 3-7 and paragraph 29), based upon advertisement priorities (paragraph 40), to determine the order in which advertisements are displayed (paragraph 38) and which is capable of reordering the list (clearing and rebuilding the schedule; paragraph 30, lines 9-11) responsive to a watchdog module (application module detecting user interaction; paragraph 30, lines 4-11) for the typical benefit of providing a stored schedule which can help ensure that advertisements are properly

prepared for output at their assigned times (paragraph 28, lines 1-11 and paragraph 38, lines 4-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond's system to include generating a list of advertisements and wherein the ad scheduler is capable of reordering the list responsive to said watchdog module, as taught by Doherty, for the typical advantage of ensuring that advertisements are properly prepared for output at their assigned times thereby promoting efficient advertisement delivery.

As to claim 75, Zigmond and Doherty disclose wherein said detecting includes detecting channel changes (see Zigmond at column 9, lines 21-28 and column 13, lines 12-28) by monitoring what channel the tuner is tuned to (monitoring channel changes; see Zigmond at column 9, lines 21-28 and column 13, lines 12-28).

As to claim 76, Zigmond and Doherty disclose wherein said detecting includes detecting program type changes based on program data (monitoring the current program being viewed; see Zigmond at column 12, lines 44-67 and column 13, lines 1-6) and channel selections (wherein the current program is inherently based upon the current channel selection; see Zigmond at column 12, lines 44-66).

As to claim 78, Zigmond and Doherty disclose a profiling subscriber interactions in order to generate a viewing session profile (monitoring and storing viewing habits;

see Zigmond at column 9, lines 65-67, column 10, lines 1-3 and lines 36-47 and column 11, lines 13-18), wherein the viewing session profile defines characteristics related to a subscriber for a viewing session (preferred channels and programs; see Zigmond at column 10, lines 40-47 and column 11, lines 15-18).

As to claim 79, Zigmond and Doherty disclose wherein said detecting includes detecting viewer changes based on viewing session profiles (identifying current viewer based upon current viewing habits; see Zigmond at column 9, lines 65-67 and column 10, lines 1-3 and lines 35-47) and previously defined subscriber profiles (past viewing habits; see Zigmond at column 9, lines 65-67 and column 10, lines 1-3 and lines 35-47), wherein the subscriber profiles define characteristics related to particular viewers (defining past preferred channels and programs; see Zigmond at column 10, lines 40-47 and column 11, lines 15-18).

As to claim 80, Zigmond and Doherty disclose wherein said detecting viewer changes (see Zigmond at column 9, lines 56-59, lines 65-67 and column 10, lines 1-3) is based upon at least some subset of characteristics defined in the viewing session profile and the subscriber profile (based upon current and past viewing habits; see Zigmond at column 9, lines 65-67 and column 10, lines 1-3), the at least some subset including at least some subset of time-of-day information (see Zigmond at column 11, lines 13-18), programs watched (see Zigmond at column 11, lines 13-18), and channel

change information (see Zigmond at column 9, lines 21-30, column 11, lines 13-18 and column 13, lines 12-19).

As to claim 81, Zigmond and Doherty further disclose inserting advertisements into avails within programming being presented to the subscriber (see Zigmond at column 15, lines 52-65), wherein the insertion is performed in accordance with the list (see Doherty at paragraph 29).

As to claim 82, Zigmond and Doherty disclose storing the list of advertisement in a storage unit (see Doherty at paragraph 29).

As to claim 83, Zigmond and Doherty disclose wherein the list includes advertisement resource locators for the advertisements in the list ("references" pointing to the ads; see Doherty at paragraph 38, lines 9-12 and paragraph 28, lines 3-7), the ARL's corresponding to locations where the advertisements can be retrieved for insertion (see Doherty at paragraph 38, lines 9-12 and paragraph 28, lines 3-7).

As to claim 84, Zigmond and Doherty disclose wherein the list includes parameters (ad selection parameters associated with the ad; see Zigmond at column 11, lines 35-42 and column 12, lines 15-17) that may affect selection of the advertisements from the list (wherein the ad is only selected when it matches certain criteria; see Zigmond at column 11, lines 35-49).

As to claim 85, Zigmond and Doherty disclose wherein the parameters include at least some subset of program (see Zigmond at column 12, lines 53-59), program type (see Zigmond at column 13, lines 48-51), and viewer identify (see Zigmond at column 14, lines 35-48).

As to claim 86, Zigmond and Doherty disclose selecting advertisements from the list based on advertisements that contain parameters associated with a channel being viewed (associated with a program being viewed on the particular channel; column 12, lines 60-67 and column 13, lines 1-6).

As to claim 87, Zigmond and Doherty disclose receiving at least one programming channel (see Zigmond at column 7, lines 13-25) from a communication network (see Zigmond at column 7, lines 13-25).

As to claim 88, Zigmond and Doherty disclose wherein the list identifies one or more linked advertising parameters for providing linked advertising (wherein the ad is linked to a particular program regardless of broadcast channel; column 12, lines 53-59).

As to claim 89, Zigmond and Doherty disclose wherein the linked advertising parameters identify program dependence of advertisements (wherein the ad is linked to a particular program regardless of broadcast channel; column 12, lines 53-59).

3. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond in view of Doherty and Lienas et al. (Lienas) (5,271,626).

As to claim 4, Zigmond discloses a subscriber system for inserting advertisements into at least one channel of media signals (Fig. 7; column 6, lines 4-12, column 10, lines 64-67 and column 11, lines 1-3), the system comprising:

an ad scheduler (or first means) (Fig. 5; ad insertion device, 80; wherein Fig. 5 is a detailed description of an insertion device used in Fig. 3) for identifying predetermined ad criteria (column 11, lines 50-53, column 11, lines 66-67 and column 12, lines 1-9) and the advertisement selection corresponding to that criteria (column 17, lines 24-28) which is to be inserted into the at least one channel (column 11, lines 42-49),

storing the criteria (column 11, lines 31-37 and column 17, lines 23-28) and advertisement selection corresponding to the identified criteria (column 11, lines 42-49), and

modifying the stored criteria whenever a modification requiring event occurs (column 12, lines 12-14 and column 13, lines 7-14); and

an ad insertion module (or second means) (Fig. 5; video switch, 90), coupled to the ad scheduler (contained in ad insertion device, 80), for inserting the advertisements into the at least one channel (column 10, lines 64-67 and column 11, lines 1-3) according to the stored criteria (column 15, lines 57-65); and

a watchdog module (ad insertion device, 60) to monitor viewing parameters (column 9, lines 21-30) and detecting changes in the viewing parameters (column 9,

lines 21-30), wherein the changes include at least some subset of channel (see Zigmond at column 9, lines 21-30 and lines 52-55), viewer (see Zigmond at column 9, lines 56-62) and program type (column 12, lines 60-67 and column 13, lines 1-6).

Although Zigmond discloses the stored criteria and advertisement selection and detecting changes in viewing parameters, he fails to specifically disclose an ordered listing of advertisements and inserting advertisements based upon this ordered listing and detecting a change in the size of an upcoming avail in the at least one channel.

In an analogous art, Doherty discloses a system for displaying targeted advertising (Fig. 1; paragraph 25, lines 1-6) wherein a scheduler (Fig. 1, 140) assembles a schedule (or ordered list; paragraph 29) of references pointing to advertisements (paragraph 28, lines 3-7 and paragraph 29), based upon advertisement priorities (paragraph 40), to determine the order in which advertisements are displayed (paragraph 38). A stored schedule would ensure that advertisements are properly prepared for output at their assigned times (paragraph 28, lines 1-11 and paragraph 38, lines 4-9).

Additionally in an analogous art, Lienas discloses a system for inserting local advertisements into programming (column 5, lines 62-68 and column 6, lines 1-3) wherein detection signals are used to detect in an upcoming commercial break is a different length then expected (column 6, lines 14-20 and lines 24-27) and shorten a commercial to unsure it fits in the break (column 6, lines 14-20 and lines 24-27) for the typical benefit of detecting and correcting for errors in the lengths of upcoming commercial breaks (column 6, lines 7-20 and lines 24-27).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond's system to include wherein a listing of the order of advertisements to be inserted is stored and the advertisements are inserted based on this ordered listing, as taught by Doherty, for the typical advantage of ensuring that advertisements are properly prepared for output at their assigned times thereby promoting efficient advertisement delivery.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond and Doherty's system to include detecting a change in the size of an upcoming avail in the at least one channel, as taught by Lienas, for the typical benefit of ensuring that a system for locally inserting advertisements will insert advertisements of the correct length into an upcoming commercial break.

As to claim 5, Zigmond, Doherty and Lienas disclose a remote control device (Fig. 8; input device, 150) for directing to the watchdog module a program channel selection by a viewer (see Zigmond at column 9, lines 21-30 and lines 52-55), wherein the watchdog module detects the channel change based on outputs from the remote control device (detecting user input channel change commands; see Zigmond at column 9, lines 21-30 and lines 52-55 and Fig. 8).

As to claim 6, Zigmond, Doherty and Lienas disclose wherein said watchdog module detects the change in the type of program being watched based on program

information (monitoring the current program being viewed; see Zigmond at column 9, lines 21-30 and lines 52-55 column 12, lines 44-67 and column 13, lines 1-6) and the channel selection received from the remote control device (wherein the current program is inherently based upon the current channel selection; see Zigmond at column 9, lines 21-30 and column 12, lines 44-66 and Fig. 8).

As to claim 7, Zigmond and Doherty disclose a profiling module (viewer and system information, 82; column 10, lines 31-47), coupled to the remote control device (receiving the viewer inputs; column 9, lines 21-30 and column 10, lines 36-47) and the ad scheduler (see Fig. 5), for receiving viewing information from the remote control device (current viewing habit information; see Zigmond at column 9, lines 21-30, 65-67 and column 10, lines 1-3 and lines 35-47) and detecting a viewer change (identifying the current viewer; column 9, lines 65-67 and column 10, lines 1-3) using a prestored viewer profile (past stored viewing habits; column 9, lines 65-67 and column 10, lines 1-3) and the viewing information received from the remote control device (current viewing habits; column 9, lines 65-67 and column 10, lines 1-3).

As to claim 8, Zigmond and Doherty disclose wherein the profiling module detects the viewer change (see Zigmond at column 9, lines 56-59, lines 65-67 and column 10, lines 1-3) using information included in the prestored viewer profile (based upon current and past viewing habits; see Zigmond at column 9, lines 65-67 and column 10, lines 1-3), the at least some subset including at least some subset of time-of-day

information associated with each viewer (see Zigmond at column 11, lines 13-18), programs watched by each viewer (see Zigmond at column 11, lines 13-18), and channel change information pertaining to each viewer (see Zigmond at column 9, lines 21-30, column 11, lines 13-18 and column 13, lines 12-19).

4. Claims 58 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond and Doherty as applied to claims 53 and 74 above, and further in view of Lienas.

As to claim 58 and 77, while Zigmond and Doherty disclose wherein said watchdog module detects changes in viewing parameters, he fails to specifically disclose detecting avail size changes based on avail data and channel selections.

In an analogous art, Lienas discloses a system for inserting local advertisements into programming (column 5, lines 62-68 and column 6, lines 1-3) wherein detection signals are used to detect in an upcoming commercial break is a different length then expected (column 6, lines 14-20 and lines 24-27) in the currently monitored channel (monitoring breaks in the current television signal; column 5, lines 62-68 and column 6, lines 1-20) and shorten a commercial to unsure it fits in the break (column 6, lines 14-20 and lines 24-27) for the typical benefit of detecting and correcting for errors in the lengths of upcoming commercial breaks (column 6, lines 7-20 and lines 24-27).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond and Doherty's system to include detecting avail size changes based on avail data and channel selections, as taught by Lienas, for

the typical benefit of ensuring that a system for locally inserting advertisements will insert advertisements of the correct length into an upcoming commercial break.

Response to Arguments

5. This action is Non-Final due to the rejection of material which was previously indicated as allowable.

6. Applicant's arguments filed 06/29/04 have been fully considered but they are not persuasive.

On page 12, paragraph 2, of applicant's response, applicant argues that none of the references disclose creating an ordered list of advertisements and modifying the ordered list based upon changes in viewing parameters. More specifically on page 12, paragraph 2, lines 6-12 applicant states "That is, Applicant submits that there is clearly no disclosure or suggestion in Doherty of modifying an ordered list based on changes in viewing parameters. Rather Doherty discloses interrupting the schedule when a user interacts with the system and returning to the schedule when the interaction is complete."

In response, applicant is directed to paragraph 30 and Fig. 2 of the Doherty reference. As seen in paragraph 30, lines 7-11, and seen in Fig. 2, steps 200 and 270, it is clearly shown that in response to a user interaction, the current schedule is **cleared** and rescheduling is then undertaken. Clearing the current schedule and then rescheduling the advertisements, based upon detection of user interaction, clearly reads

upon "modifying an ordered list based on changes in viewing parameters", as recited in the claims.

Conclusion

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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_____

Signature: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (703) 305-8722. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (703) 305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda
Patent Examiner
Art Unit 2614

JS

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600